

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: David M. Hoon; Teri L. Hoon

CASE 41U-0119-R-2023

41U 108093-00

41U 108111-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. The record owners of claims 41U 108093-00 and 41U 108111-00 are David M. Hoon and Teri L. Hoon.

2. The claims were decreed with DNRC issue remarks:

41U 108093-00:

ON 3/11/1985, AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE, THE DNRC NOTIFIED THE WATER COURT OF A POTENTIAL ISSUE WITH THE SOURCE NAME FOR THIS CLAIM. THE ELEMENT IS BEING ADDED TO THE OBJECTION LIST AND WILL BE ADDRESSED DURING ADJUDICATION OF THE PRELIMINARY DECREE.

41U 108111-00:

POINT OF DIVERSION, RESERVOIR RECORD, AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PLACE OF USE APPEARS TO BE IN THE SENESW SEC.5 TWP 16N RGE 5W.

All issue remarks must be addressed.

3. Claim 41U 108093-00 was decreed with the source listed as “Spring, Unnamed Tributary of Dearborn River.” Based on information in the record, it appears the source should be corrected to “Spring, Unnamed Tributary of Jeffries Creek.”

4. Claim 41U 108111-00 was decreed with the place of use listed as:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NENESW	5	16N	5W	LEWIS AND CLARK

According to the DNRC, it is appropriate to change the place of use to match the changes made to the point of diversion during its review, as follows:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENESW	NENESW	5	16N	5W	LEWIS AND CLARK

5. An Order was issued setting a deadline for Claimants David M. Hoon and Teri L. Hoon to file statements agreeing or disagreeing that the source name for claim 41U 108093-00 be corrected to Spring, Unnamed Tributary of Jeffries Creek and agreeing or disagreeing with the proposed place of use legal land description modification. The Order indicated that if nothing were filed by the March 31, 2023 deadline, this Water Master would conclude the Claimants agree with the proposed changes. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

On March 23, 2023, the Order Consolidating and Setting Filing Deadline was returned by United States Mail, indicating “RETURN TO SENDER/NO MAIL RECEPTACLE/UNABLE TO FORWARD.” Water Court research was unable to verify a new address for Claimants David M. Hoon and Teri L. Hoon, however, the Order was resent to the following similar/possible address:

Angus Hoon Ranch Wolf Creek MT
5610 Mount Hwy 434
Wolf Creek, MT 59648

It is the responsibility of parties to keep their address updated.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The point of diversion, reservoir record, and means of diversion issue remark decrees on claim 41U 108111-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The source for claim 41U 108093-00 should be modified to “Spring, Unnamed Tributary of Jeffries Creek.”
2. The following place of use changes should be made to claim 41U 108111-00:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENESEW	NENESW	5	16N	5W	LEWIS AND CLARK

3. The issue remarks should be removed from the claims in this Case.
Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

David M. Hoon
Teri L. Hoon
5610 HWY 434
Wolf Creek, MT 59648

Angus Hoon Ranch
5610 Mount Hwy 434
Wolf Creek, MT 59648

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 108093-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID M HOON
5610 MOUNT HWY 434
POWER, MT 59468

TERI L HOON
5610 HWY 434
WOLF CREEK, MT 59648

Priority Date: MAY 1, 1882

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF JEFFRIES CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	8	16N	5W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENWNE	8	16N	5W	LEWIS AND CLARK

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 108111-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID M HOON
5610 MOUNT HWY 434
POWER, MT 59468

TERI L HOON
5610 HWY 434
WOLF CREEK, MT 59648

Priority Date: OCTOBER 1, 1890

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF DEARBORN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE SW	5	16N	5W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE SW	5	16N	5W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE SW	5	16N	5W	LEWIS AND CLARK